**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 12991 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SAROJBA D/O VAGHUBHA ZALA & 6 - Petitioner(s)**
**Versus**
**THE STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**
MR DILIP B RANA for Petitioner(s) : 1 - 2.MR MUKESH N PANDIT for Petitioner(s) : 1 - 2.
MR NEERAJ SONI A.G.P. for Respondent(s) : 1,
None for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

**Date : 01/08/2007**

**ORAL JUDGMENT**

1. **RULE**. Mr. Neeraj Soni learned A.G.P., waives service of rule on behalf of the respondents. At the request of the learned advocates for the parties the

matter is taken up for final hearing today itself.

2. It is the case of the petitioners that they have been enjoying tenancy right over the disputed land since long. However, the respondent no. 2 by passing the impugned order has dismissed the application of the petitioners which was filed in pursuance of the Notification issued by respondent no. 2 under Section 18 of the Wild Life [Protection] Act, 1972. According to the petitioners before passing the impugned order no opportunity of hearing has been granted to them.

2.1. The record of the petition shows that the deceased sister of the petitioners was given possession of the land in question under the Karami Lekh for the purpose of manufacturing salt. Subsequently, she was declared as tenant of the estate as the said land was included under the Notification dated 2nd September, 1954 issued under Section 3 of the Estates Acquisition Act. The record further shows that in tenancy proceedings which were initiated later on, the present petitioners have been shown as heirs and legal representatives of the deceased sister of the petitioners. It further appears that the land has been declared as Ghudkhar Wild Life Sanctuary by Notification dated 12th January, 1973

published under the provisions of Wild Life [Protection] Act. In view of the same, Notification under Section 18 was issued intimating the persons interested in the said land to file appropriate application to establish their rights, interest etc., in the land forming part of the sanctuary. In pursuance of the same, the aforesaid application was filed by the petitioners which subsequently was dismissed by the impugned order dated 25th April, 2000. Perusal of the said order shows that the petitioners were issued notices dated 24th December, 1999, 13th January, 2000, 22nd March, 2000 intimating to them the date of hearing. However, none remained present on those dates. The authority therefore, proceeded on the footing that the petitioners were not interested in proceeding with the matter and establish their right or interest in the land in question and rejected the application.

3. I have heard Mr. Rana learned advocate for the petitioners and Mr. Neeraj Soni learned A.G.P., for the respondents. It is the submission of Mr. Rana that the impugned order is passed without following the principles of natural justice *inasmuch* as no notice was served on the petitioners. According to him, since the impugned order suffers from inherent defect, it is required to be

quashed and the matter is required to be remanded to respondent no. 2 for his reconsideration. The state has however contested the petition by filing affidavit-in-reply. It is stated therein as well as it is submitted by Mr. Soni that despite notices having been served on the petitioners, they have not remained present and produced necessary material to establish their right. Hence, respondent no. 2 was justified in rejecting the application.

4. I have closely perused the record of the case. The original file is also kept present by Mr. Soni and I have perused it too. It clearly appears that the notices that were despatched by respondent no. 2 were in the name of Gam ba sister of the petitioner who had expired about 30 years before the date of issuance of the notice and subsequent notice to Kadam ba, another sister of the petitioner who had also expired 10 years prior to the date of issuance of the notice. No notices have been issued in the name of the present petitioners who are their heirs and legal representatives. It is true that they should have responded to the said notices since it was in their interest to appear before respondent no. 2 and produce necessary evidence to establish their right. But they have not cared to do so. However, technically

speaking, no notice was served on the petitioners, in response to which they could have remained present before respondent no. 2 on the dates of hearing. Hence, the impugned order is passed without hearing them and it suffers from violation of principles of natural justice. On this ground alone the impugned order deserves to be quashed and set aside and it is hereby quashed and set aside. The matter is remanded to respondent no. 2 for his reconsideration. The petitioners shall make fresh application to respondent no. 2 in pursuance of the Notification referred to above within one month from the date of this order. The petition should be accompanied by declaration made on affidavit that the said application is filed on behalf of and with the consent of all the heirs and legal representatives of the deceased sisters of the petitioners and no other person will be thereafter entitled to raise any dispute on that count. Respondent no. 2 shall take decision thereon after giving adequate opportunity of hearing to the petitioners. The date of hearing shall be intimated to the petitioners at least one week prior to the date of hearing. The petitioners may be permitted to produce all the necessary material in support of their say. After considering the oral submissions as well as the material that may be produced by respondent no. 2 he may take appropriate decision and

intimate the same within 15 days thereafter to the petitioners. The entire exercise is directed to be completed on or before 31st December, 2007

5. The petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[Akshay H. Mehta, J.]

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